



General Assembly

Distr.
LIMITED

A/CONF.164/L.39
16 March 1994

ORIGINAL: ENGLISH

UNITED NATIONS CONFERENCE ON STRADDLING
FISH STOCKS AND HIGHLY MIGRATORY
FISH STOCKS
New York, 14-31 March 1994

ELEMENTS OF A DRAFT INSTRUMENT ON CONSERVATION AND MANAGEMENT
OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS
COMPATIBLE WITH SUSTAINABLE DEVELOPMENT

Submitted by the delegation of Sweden

PREAMBULAR ELEMENTS

1. In determining and interpreting the provisions in the following, it is understood that the legal basis for the conservation and management of straddling fish stocks and highly migratory fish stocks is to be found in the 1982 United Nations Convention on the Law of the Sea.
2. The newly adopted Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas is a valuable instrument within its scope. States should favourably consider acceptance of this instrument, and its provisions are to be seen as a firm basis for further deliberations in other forums, as well as a basis for the provisions in the following.
3. The International Code of Conduct on Responsible Fishing, to be finalized by the Food and Agriculture Organization of the United Nations (FAO) by 1995, will give a generally applicable set of guidelines, equally well suited for the purpose of determining and interpreting the provisions in the following.
4. The convening of a Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks was proposed by the United Nations Conference on Environment and Development (UNCED), as may be seen in Agenda 21, chapter 17. Some basic prerequisites for the Conference are laid down in that chapter. These prerequisites are mandatory guidelines for determining and interpreting the provisions in the following.

5. The United Nations Commission on Sustainable Development is the organ entrusted with the task of following up the implementation of the results of UNCED. It is therefore the proper forum to follow up the Agenda 21 provisions on marine living resources. It is also the proper forum for following up the provisions adopted by this Conference.

6. General Assembly resolutions 47/192 of 22 December 1992 and 48/194 of 21 December 1993 form the formal mandate for determining and interpreting the provisions in the following.

7. Straddling fish stocks and highly migratory fish stocks are threatened. Although marine living resources, both in the exclusive economic zones and in the high seas, are renewable resources, which when managed well could sustainably provide resources, lack of proper management or management measures and over-investment in fishing fleets are a common recent development. Over-investment in marine fisheries has been estimated by FAO to be on the order of US\$ 30 billion. In many cases straddling fish stocks and highly migratory fish stocks are heavily over-exploited and threatened by severe depletion. Such economic and biological damage may take years and even decades to repair.

I. GENERAL PRINCIPLES ON CONSERVATION AND MANAGEMENT OF
STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH
STOCKS COMPATIBLE WITH SUSTAINABLE DEVELOPMENT

I.1. The freedom of the high seas

It has been a long-established custom to refer to the freedom of the high seas, a freedom which is open to all States and which encompasses freedom of fishing. It would, however, be incorrect to maintain that freedom of the high seas is a complete freedom entailing no responsibility. Freedom of fishing shall be exercised with due regard to the interest of other States. The utilization of straddling fish stocks and highly migratory fish stocks can never be seen as the interest of a single State only.

States fishing on the high seas should cooperate with each other and with coastal States in the conservation and management of straddling fish stocks and highly migratory fish stocks. Utilization without resource management could in the end result in a situation where the rights of other States would be infringed, an effect which is not in accordance with the principle of freedom of the high seas.

I.2. Cooperation with respect to straddling fish stocks
and highly migratory fish stocks

States should cooperate in good faith with one another in the various spheres of international relations in order to promote the general welfare of nations.

This general duty is further elaborated in the 1982 United Nations Convention on the Law of the Sea.

/...

Conservation and management of straddling fish stocks and highly migratory fish stocks compatible with sustainable development require cooperation among coastal States and States fishing on the high seas. Such cooperation should be undertaken within the framework of regional organizations or arrangements and be based on ecological principles.

I.3. Conservation and management compatible with sustainable use

Conservation and management of straddling fish stocks and highly migratory fish stocks should be compatible with sustainable use and to that end promote the maintenance of the quantity, quality, diversity and availability of fisheries resources for present and future generations.

I.4. Precautionary approach

The precautionary approach should be applied to the management of straddling fish stocks and highly migratory fish stocks. Conservation and management measures should be adopted, aimed at reducing the risk of damage to the living marine resources and the environment, taking account of scientific and technical uncertainty as well as the best scientific evidence available.

II. REGIONAL COOPERATION FOR FISHERIES ON THE HIGH SEAS OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

II.1. Membership in regional fisheries cooperation bodies

(Text from the United Nations Convention on the Law of the Sea, complemented as necessary by the negotiating text prepared by the Chairman (A/CONF.164/13, paras. 35-38), amended in accordance with the following three principles: (a) mandatory membership for States whose vessels fish on the high seas; (b) rules within the regional bodies allowing for the admission of new members to these bodies; especially directed towards developing countries; (c) such rules should be laid down at the global level, for instance by this Conference)

II.2. Conservation and management measures compatible with sustainable development

(The negotiating text proposed by the Chairman (A/CONF.164/13, para. 4), complemented as appropriate with elements from the FAO paper on the precautionary approach)

II.3. Compliance and control

(Text from the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, complemented as appropriate with text from the negotiating text prepared by the Chairman (A/CONF.164/13, paras. 18 and 22-34, inter alia), on stricter compliance, control and enforcement measures when needed)

II.4. Dispute settlement

(Text from the United Nations Convention on the Law of the Sea)

III. COOPERATION TO ENSURE COMPATIBILITY AND COHERENCE BETWEEN CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS IN THE HIGH SEAS AND FISHERIES IN THE EXCLUSIVE ECONOMIC ZONES

III.1. Need for cooperation

Regional cooperation, inter alia, in the North-West Atlantic Ocean, the Indian Ocean and the Bering Sea has highlighted the necessity of dealing with the whole straddling fish stocks and highly migratory fish stocks in order to be successful in combating over-exploitation. Such cooperation must not await the near depletion of stocks. Conservation and management of straddling fish stocks and highly migratory fish stocks must be based on scientific evidence resulting from research and assessment of the whole stocks.

III.2. Forms of cooperation

Fisheries of coastal States of straddling fish stocks and highly migratory fish stocks in the exclusive economic zones will have to be compatible and coherent with the conservation and management measures on fisheries of straddling fish stocks and highly migratory fish stocks adopted by regional organizations or arrangements. This may be achieved in different ways, including:

(a) Incorporation of fisheries of straddling fish stocks and highly migratory fish stocks into regional management regimes for fisheries of straddling fish stocks and highly migratory fish stocks;

(b) Separate agreements between coastal States and relevant regional organizations for fisheries of straddling fish stocks and highly migratory fish stocks on the high seas, or unilateral declarations by coastal States, on compatibility and coherence of fishing in the exclusive economic zones with conservation and management measures agreed upon in the relevant regional organization or arrangements.

The first option is applied in major regional organizations such as the draft Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea. This option should be given priority.

If option (b) is applied the agreements or declarations should ensure compatibility and coherence with the conservation and management measures adopted by regional organizations or arrangements for fisheries in the high seas. As concerns the issue of compliance and control, fisheries of coastal States of straddling fish stocks and highly migratory fish stocks in their exclusive economic zones, and action taken to implement management measures compatible and coherent with those agreed upon within the regional organizations or arrangements, should be reported by coastal States on a yearly basis to the relevant regional organization or arrangement.

The establishment of measures by coastal States on fisheries of straddling fish stocks and highly migratory fish stocks in their exclusive economic zones shall be without prejudice to the sovereign rights of the coastal States for the purpose of exploring, exploiting, managing and conserving living marine resources with areas under national jurisdiction, exercised in accordance with the United Nations Convention on the Law of the Sea.

IV. SPECIAL REQUIREMENTS OF DEVELOPING COUNTRIES

(Text from the negotiating text proposed by the Chairman (A/CONF.164/13, paras. 52-57))

V. REVIEW OF THE IMPLEMENTATION OF THE INSTRUMENT

Conferences of ministers of fisheries within the framework of FAO and with the participation of all regional organizations and arrangements shall be convened every fourth year to prepare the regular reviews by the Commission on Sustainable Development of chapter 17 of Agenda 21 and in that context to review the implementation of the instrument. The outcome of the reviews by the Commission on Sustainable Development of the conservation and management of straddling fish stocks and highly migratory fish stocks, including reviews of the implementation of the instrument, will be presented to the General Assembly of the United Nations via the Economic and Social Council. It will also provide an input to the report which is submitted directly to the General Assembly law of the sea matters.
